IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.11.2007
CORAM :
THE HON□BLE MR. JUSTICE S.TAMILVANAN
A.S.No.220 of 1996

Moosa Sulaiman .... Appellant

vs.
1. E.I.D. Parry Staff
Gratuity Fund by Trustees.

2. Parry and Company Ltd.,

3. E.I.D. Parry India Ltd., ... Respondents

Appeal filed against the Judgment and Decree, dated 24.02.1993 made in O.S.No.5490 of 1989 on the file of the XVII Asst. Judge, City Civil Court, Madras.

For Appellant : Mrs.Sheila Jayaprakash

For Respondents : Mr.Giridhar Rao

JUDGMENT

This appeal has been directed against the Judgment and Decree, dated 24.02.1993 made in O.S.No.5490 of 1989 on the file XVII Asst. Judge, City Civil Court, Chennai.

2. It is not in dispute that the appellant / plaintiff had been an employee under the respondents and voluntarily retired from service on 17.09.1985 and that he was paid a sum of Rs.30,000/- towards gratuity. He made a representation to the respondents to pay additional gratuity, since, he had served for about 30 years in respondent's company, but the same was negatived by the respondents. Hence, the appellant has filed the suit, seeking a direction to the respondents to pay Rs.45,000/- as additional gratuity together with interest.

3. Mrs. Sheila Jayaprakash, learned counsel appearing for the appellant drew the attention of this Court to the Trust Deed, marked as Ex.B.1, at paragraph No.11 (a), where it has been stipulated as follows :
" The Gratuity will be paid at the rate of half of one month's average salary for the last 5 years for each year of continuous service (herein after referred to as the "average salary") subject to a maximum of 20 months' average salary or Rs.30,000/- whichever is less. "
As per paragraph 13 of the Trust Deed, payment of additional gratuity is only the discretion of the Trustees. Here in this case, though the appellant had made a representation for getting additional gratuity, the respondents have rejected the claim of the appellant. Paying additional gratuity is only the discretion of the respondents. On the facts and circumstances of the case, as found by the court below, it is not mandatory on the part of the respondents to pay additional gratuity to the employees of the company. In other words, the claim is not a legal right to be enforced through court of law.

4. As per the Trust Deed of the respondents, payment of additional gratuity is only the discretion of the Trustees. Therefore, after having rejected the request of the appellant by the respondents, it would not a legal right of the appellant in seeking additional gratuity. Only a recognised right is legally enforceable through court of law. As per the Trust Deed of the respondents, getting additional gratuity is not a recognised right to an employee. Hence, there is no error or infirmity in the impugned Judgment and Decree of the trial court in dismissing the suit.

5. In the result, confirming the impugned Judgment and Decree passed by the court below, the appeal is dismissed. No order as to costs.

tsvn

To

The XVII Asst. Judge,
City Civil Court,
Madras.